



Date: May 13, 2014

To: Mayor and City Council, City Manager
From: Patrick Baker, City Attorney
Subject: Amendments to Durham City Code Sec. 46-22 Regulating the Posting of a Prohibition Against Carrying a Concealed Handgun on City Recreational Facilities; Repeal of Durham City Code Sections 46-23 through 46-27 Containing Regulations of Dangerous Weapons Which Are Either Duplicative Of, or In Conflict With, Other State and Local Laws

Executive Summary

Effective October 1, 2013, a local government may not adopt an ordinance authorizing the posting of a prohibition against carrying a concealed handgun on a playground. Further, while a local government may continue to have an ordinance which authorizes the posting of a prohibition against carrying a concealed handgun at or on an athletic field, an area will only qualify as an athletic field during an organized athletic event when the field has been scheduled for use with the municipality. Finally, statutory clarifications and changes to existing terminology suggest a legislative intent that athletic facilities, at which the posting of a prohibition against carrying a concealed weapon is allowed, should include only more substantive structures such as a building.

In addition, back on April 15, 2013, the City Council approved amendments to the various City ordinances regulating the discharge and possession of dangerous weapons on City property. At that time, it was explained and recommended to Council that Sections 46-23 through 46-27 of the Durham City Code should be repealed since those ordinances either duplicated or were in conflict with State and/or other local laws. Due to a technical drafting error, those ordinances were not repealed.

The proposed amendments will revise City Code Section 46-22, and will repeal City Code Sections 46-23 through 46-27, so that the ordinances are consistent with, and not duplicative of, State and local laws.

Recommendation

Staff recommends approval of the City Code amendment set forth in Attachment 1.

Background

Effective December 1, 2011, N.C.G.S. §14-415.23 was amended so that local governments were no longer authorized to prohibit the lawful carrying of concealed handguns in parks. The law did permit a local government to adopt an ordinance authorizing the posting of a prohibition against carrying a concealed handgun on local government buildings, their appurtenant premises, and specifically identified recreational facilities. The term recreational facility was defined to include only: a playground, an athletic field, a swimming pool, or an athletic facility.

On April 15, 2013, the City Council approved amendments to the various City ordinances regulating the discharge and possession of dangerous weapons on City property to ensure compliance with the State's requirements. At that time, it was explained and recommended to Council that Sections 46-23 through 46-27 of the Durham City Code should be repealed since those ordinances either duplicated or were in conflict with State and/or other local laws. Due to a technical drafting error, those ordinances were not repealed.

During last year's legislative session, the North Carolina General Assembly passed House Bill 937 which again amended N.C.G.S. 14-415.23. Effective October 1, 2013, a local government may not adopt an ordinance authorizing the posting of a prohibition against carrying a concealed handgun on a playground. Further, while a local government may continue to have an ordinance which authorizes the posting of a prohibition against carrying a concealed handgun at or on an athletic field, an area will only qualify as an athletic field during an organized athletic event when the field has been scheduled for use with the municipality. In addition, the term "athletic facility" was changed to the phrase "a facility used for athletic events" and while left undefined, an example of its intended meaning i.e. a gymnasium, was provided. Finally, the amendments clarify that the term "recreational facility," does not include greenways, biking or walking paths, nor open areas or fields where athletic events may occur unless the area qualifies as an athletic field. The amendments to the term "athletic facility," coupled with the latter clarifications, seem to indicate a legislative intent that "facilities used for athletic events," at which the posting of a prohibition against carrying a concealed weapon is allowed, include only more substantive structures such as a building.

Issues and Analysis

Durham City Code Sec. 46-22(b) currently authorizes the City Manager to permit the posting of a prohibition against carrying a concealed handgun on specifically identified recreational facilities. These recreational facilities include all City playgrounds, athletic fields, swimming pools and various types of athletic facilities such as basketball and tennis courts. Amendments to N.C.G.S. 14-415.23, which became effective October 1, 2013, require the removal of some of the recreational facilities currently identified in the ordinance. Facilities which should be removed to ensure compliance with State law are playgrounds and athletic facilities which do not consist of substantial structures, such as a building, but rather are primarily open areas and fields which may be used for athletic events but which nonetheless do not qualify as an athletic field. The latter would include areas such as the City's various basketball, volleyball and tennis courts. The ordinance may continue to allow the posting of a prohibition against carrying a concealed handgun at or on an athletic field, but the ordinance must clarify that the prohibition only applies during an organized athletic event for which the use of the field has been scheduled with the City.

In addition, Sections 46-23 through 46-27 of the City Code should be repealed since the provisions in these ordinances currently either duplicate or are inconsistent with State law or other ordinances.

Alternatives

If City Code Sec. 46-22(b) is not amended and Sections 46-23 through 46-27 are not repealed, they will contain provisions which are in conflict with State law and those provisions will therefore be unenforceable.

Financial Impact

There is no financial impact to the City by this agenda item.

SDBE Summary

There are no SDBE requirements for this agenda item.

Attachments

Attachment 1, Ordinance to Amend Durham City Code Sec. 46-22, and to Repeal Durham City Code Sections 46-23 through 46-27